

Original Title Page

**GEORGIA – SOUTH CAROLINA MARINE TERMINAL OPERATOR
COOPERATIVE WORKING AGREEMENT**

FMC Agreement No. 201293

A Cooperative Working Agreement

Expiration Date: [None]

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ARTICLE 1 FULL NAME OF AGREEMENT

This Agreement shall be known as the Georgia – South Carolina Marine Terminal Operator Cooperative Working Agreement (“Agreement”).

ARTICLE 2 PURPOSE OF THE AGREEMENT

SSA Atlantic, LLC¹ (“SSA”), Ceres Marine Terminals Inc. (“Ceres”) and Ports America Florida, Inc. (“Ports America”) are authorized to form a new entity (“NEWCO”), a Delaware limited liability company, to provide container marine terminal services and stevedoring in the ports of Savannah, Georgia and Charleston, South Carolina (the “Ports”). The purpose of this Agreement is to set forth the terms and conditions on which NEWCO shall operate, the agreement of the Parties regarding services to be provided to and by NEWCO and other related cooperative working arrangements among the Parties.

ARTICLE 3 PARTIES TO THE AGREEMENT/GEOGRAPHIC SCOPE

The Parties to this Agreement (each a “Party” and more than one collectively the “Parties”) are identified in Appendix A and are marine terminal operators as defined in the Shipping Act of 1984, as amended (the “Shipping Act”), 46 U.S.C. § 40102(14). Each Party operates public wharves, other marine terminal facilities, or a combination of the foregoing in connection with ocean common carriage. This Agreement covers services and activities of the Parties at the Ports.

¹ Until recently SSA Atlantic, LLC was known as SSA Cooper LLC.

ARTICLE 4 OVERVIEW OF AGREEMENT AUTHORITY

4.1 NEWCO shall operate as a Marine Terminal Operator defined in 46 CFR 535.104(q). NEWCO's organization and procedures are determined by NEWCO's formational documents, as agreed, amended and supplemented by the Parties. The NEWCO Members are Ceres, Ports America and SSA.

4.2 NEWCO shall provide marine terminal services and conduct container stevedoring, terminal, container freight station, and activities incidental thereto, at the Ports. Specifically, the Parties agree that, during the term of this Agreement, NEWCO will assume responsibility for providing those facilities and services currently provided by the Parties in their individual capacity in the Ports, including marine terminal gate operations and vessel loading and unloading operations, and the operation of equipment and technology related thereto.

4.3 NEWCO and the Parties expect to enter into long-term license agreements with each of the Ports for the use of facilities in those Ports. Such agreements will detail the services to be provided by NEWCO within the scope set out above, and include matters ancillary to those services, such as development of systems, policies and procedures to enhance operational coordination between those facilities and services which will be provided by NEWCO (e.g., marine terminal gate and vessel loading and unloading operations) and those facilities and services which currently are, and will remain, under the control of the Ports (e.g., operation and manning of cranes and container yard areas), in order to provide more efficient and better quality service for users.

4.4 NEWCO may act in furtherance of its stevedoring, terminal, and container freight station and activities incidental thereto, as follows:

- (a) Establish rates, charges and competitive practices.
- (b) Publish marine terminal operator schedules.
- (c) Negotiate and enter into agreements within the scope of NEWCO's scope, with the Ports and/or any other third parties concerning marine terminal facilities and/or services, and/or agreements to provide stevedoring, and other related services, subject to any applicable governmental filing requirements.
- (d) Take measures necessary or appropriate to comply with applicable governmental requirements, including with respect to security, safety, environmental and other standards;
- (e) Either directly or through subcontractors hire labor, including union labor, for its authorized operations;
- (f) Either directly or through subcontractors, own and/or lease and operate cranes, lift machines, trucks and other equipment and gear to be used for NEWCO's purposes;
- (g) Enter into agreements in its own name to obtain services and materials required for such operations. Such services and materials may include:
 - (i) payroll, coordination of external audits, billing, and accounts payable;
 - (ii) tax services, such as the preparation and filing of, and assistance with respect to, tax returns and reports to the Internal Revenue Service;

(iii) legal services; insurance services, including assistance in designing, obtaining and negotiating insurance policies;

(iv) property management services, including the administration of leasehold and/or ownership interests in land and equipment;

(v) human resources services;

(vi) services related to public affairs;

(vii) marketing, advertising, and public relations services, such as developing a customer service program, and/or pursuing third party opportunities;

(viii) general services with respect to government relations;

(ix) vessel planning services;

(x) provision of any guarantees to a Port that may be necessary as security required by such Port under any agreements between any of the Parties and any Port for use of facilities at that Port.

(h) Engage in such other activities as are customary for a marine terminal and/or stevedoring operation within the scope of NEWCO's license agreements.

(i) Perform all functions necessary to operate a Delaware limited liability company, including but not limited to maintenance of company books and records, preparation of financial statements, filing of tax returns and other tax information as required, establishment of bank accounts and investments, maintenance of offices and hiring and management of personnel, indemnification of managers and officers, and maintenance of insurance.

4.5 The Parties are authorized to consult, exchange information, discuss, and make and implement agreements regarding the subjects of this Article 4, subject to any limitations or filing

requirements set forth in the Shipping Act and FMC regulations. Such agreements include, *inter alia*:

(a) Agreements for any one or more of the other Parties to provide and/or perform, for the benefit of NEWCO, information technology services, accounting services, administrative services and operational functions.

(b) Agreements for any one or more of the other Parties to provide for the benefit of NEWCO union labor; provided, however, nothing contained in this Agreement shall preclude NEWCO from directly contracting for its own labor.

(c) Agreements for any one or more of the other Parties to lease to NEWCO stevedoring and terminal equipment necessary for NEWCO's operations.

4.6 NEWCO may form local operating subsidiaries in Charleston and Savannah to carry out any of the foregoing authorities separately for each specific port.

ARTICLE 5 COOPERATIVE WORKING ACTIVITIES

5.1 **General.** To promote the most efficient use of port and terminal assets and resources by NEWCO, the Parties are authorized to meet together, exchange information, consult, discuss, reach agreement about cooperation at the Ports, and, subject to the filing and effectiveness provisions of the Shipping Act and implementing regulations of the Federal Maritime Commission, implement or effectuate such agreements.

5.2 **Specific Types of Cooperation.** Particular areas where the Parties may cooperate, within the scope of its authority consistent with oversight of the particular Port, with regard to the operation of NEWCO include:

1. Operational matters, such the interchange of cargo, chassis, and containers, gate access and rules, use/storage of equipment use and/or measures to reduce vehicle congestion.
2. Activities or conditions relating to environmental issues, including the establishment and maintenance of programs to minimize environmental impact; measures to meet or implement mandatory or voluntary requirements with respect to air quality at the Port; and measures to promote the purchase or use of newer and/or more environmentally-sound equipment.
3. Security, (including physical and cyber security), compliance with federal, state, local, and other standards with respect to same, transportation worker identification credential (“TWIC”) technology and other port and cargo security technology (including hardware, software, and databases), as well as data and privacy compliance
4. Allocation and use of equipment, chassis, personnel, resources, and services for efficient and competitive service levels, including allocation of revenue or costs.
5. Joint contracting for the purchase, ownership, lease, or operation of equipment, facilities, and any services related thereto.

5.3 **Discussion and Exchange of Information.** In furtherance of the authorities set forth above, the Parties are authorized to meet as appropriate to discuss and exchange information regarding the following subjects as related to NEWCO’s operations at the Ports:

- (a) Joint or independent acquisition and utilization of marketing materials for individual customers and/or groups of customers (conferences, alliances, joint services,

carrier networks, ports, and other agreements to which ocean common carriers or ports are parties) (any such entity individually a “Customer” and collectively “Customers”), shippers, beneficial cargo owners, and ocean transportation intermediaries;

(b) Commercial opportunities regarding Customers. This includes vessel calls and rotations, operational efficiencies, cost reductions, the changing shipping environment, large ship operations, supply-chain technology, stevedoring, gate, rail and yard operations, warehousing, safety and security, customer service, and new product lines;

(c) Joint or independent acquisition, utilization, and best practices relating to operating systems and equipment;

(d) In addition, the Parties are authorized jointly to meet with and exchange information with Customers, shippers, other marine terminal operators, beneficial cargo owners, and ocean transportation intermediaries regarding operational issues and performance criteria at a Port or the Ports, subject to any limitations or filing requirements set forth in the Shipping Act and FMC regulations; and

(e) Nothing contained in this Article permits the Parties to exchange or share non-public information that is subject to a confidentiality agreement or restriction prohibiting or restricting such sharing or exchange.

5.4 Data and Information Collection.

In connection with the foregoing, the Parties are authorized to collect, obtain, compile, maintain, analyze, and develop relevant data, records, statistics, studies, compilations, consultancy reports, forecasts, projections, know-how, and other information regarding customers, assets,

leases, and providers (collectively “Data”) and to exchange, compile, maintain, analyze, and develop such Data, subject to any applicable confidentiality clause.

5.5 Limitations and Filing Requirements.

Implementation of any agreements between the Parties or with third parties shall be subject to the filing and effectiveness requirements of the Shipping Act and the Federal Maritime Commission’s implementing regulations, to the extent applicable.

ARTICLE 6 ADMINISTRATION AND DELEGATION OF AUTHORITY

This Agreement will be administered by the Parties through their respective Chief Executive Officer/Executive Director or individuals delegated by the Parties’ respective Chief Executive Officers/Executive Directors. The activities may be carried out by face-to-face meeting, telephone or video conference, electronic mail or other electronic communication, or such other means of communication as the Parties may deem appropriate. The Parties may establish such committees as they deem appropriate for furtherance of the purposes of this Agreement.

The Parties’ respective Chief Executive Officers, or their delegates (including counsel to a Party), are authorized to execute this Agreement and any subsequent amendments hereto on behalf of the Parties, and to make or authorize the filing of this Agreement and any subsequent amendments with the Federal Maritime Commission, as well as the filing of minutes of discussions covered by this Agreement as and when required by 46 C.F.R. § 535.704.

ARTICLE 7 VOTING

Except as specifically otherwise provided hereunder, all matters relating to this Agreement shall be by unanimous agreement of the Parties.

ARTICLE 8 CONFIDENTIALITY

The Parties agree and understand that all information exchanged under this Agreement may contain non-public, confidential business information, and trade secrets. The Parties shall treat all non-public information exchanged pursuant to this Agreement as confidential. The Parties recognize that such confidentiality may be limited by legal requirements applicable to one or both Parties under federal, state, or local law.

The confidential information of each Party shall remain the property of the Party despite being shared with other Parties. In the event a Party elects to terminate this Agreement, all Parties will return, or certify the deletion and/or destruction of, any confidential information received from another Party under this Agreement. The obligations under this Article survive the termination of the Agreement.

ARTICLE 9 EFFECTIVE DATE, DURATION, AND TERMINATION

This Agreement will become effective on the date it becomes effective under the Shipping Act, and will remain in effect indefinitely. This agreement may be terminated with the unanimous consent of all three parties, or upon the occurrence of a termination event as defined in the formation documents of NEWCO.

ARTICLE 10 AMENDMENTS

The terms of this Agreement may be amended by unanimous agreement of the Parties. Such amendments shall be in writing, signed by the Parties, and to the extent required under the Shipping Act, shall be filed and only become effective as provided in the Shipping Act and applicable regulations.

ARTICLE 11 NOTICES

Any notice permitted or required under this Agreement shall be in writing and served on each Party at the address set forth herein (or such other address as may be designated by the Party), either by electronic delivery, first class certified mail, return receipt requested, or by overnight delivery service.

ARTICLE 12 COUNTERPARTS

This Agreement and any future amendment hereto may be executed by the Parties' duly-authorized representatives in multiple original counterparts. Each counterpart shall be deemed an original, and all together shall constitute one and the same agreement.

ARTICLE 13 LAW AND MEDIATION

This Agreement shall be governed by, and construed in accordance with, U.S. Maritime law, including the Shipping Act, and to the extent any matter is not addressed thereby, by the laws of the State of Delaware consistent therewith. In case of a dispute arising under or relating to this Agreement, the Parties agree to attempt to settle the dispute amicably through non-binding mediation before bringing any action, but completion of the mediation shall not be required as a

condition to bringing any other legal action. A Party may invoke mediation by submitting a written notice to the other Party(ies). The involved Parties will attempt to agree on a mediator within ten (10) days of the written notice and mediation will conclude within 30 days of the written notice unless the Parties agree to an extension of mediation. The Parties agree that any mediation shall take place in Charleston, South Carolina, unless the Parties mutually agree to a different location. The Parties agree that any action shall be brought in the state or federal courts sitting in Charleston County, South Carolina, and the Parties specifically and explicitly submit to the jurisdiction of those courts.

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by
their authorized representatives as of this 28 day of Mar., 2019:

Ports America



[Name] Mark Montgomery
[Title] President & CEO

Ceres

[Name]
[Title]

SSA



[Name] Mark Knudsen
[Title]

IF "

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by
their authorized representatives as of this 28 day of March, 2019:

Ports America

[Name]
[Title]

Ceres



[Name] Patrick Burgoyne
[Title]

SSA

[Name]
[Title]

APPENDIX A

The names and addresses of the Parties are:

Ports America Florida, Inc.
525 Washington Blvd
Suite 1660
Jersey City, NJ 07310

SSA Atlantic, LLC
(f/k/a SSA Cooper LLC)
1131 SW Klickitat Way
Seattle, WA 98134

Ceres Marine Terminals Inc.
2 Tower Center Blvd.
East Brunswick, NJ 08816